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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANITA D. PARATLEY,)	CASE NO. C-05-4312 (MMC)
)	
Plaintiff,)	[San Francisco County Superior
)	Court Case No. 05-445379]
vs.)	
)	STIPULATED PROTECTIVE ORDER
CONSECO HEALTH INSURANCE)	
COMPANY and DOES 1 through)	
10,)	Assigned to: The Honorable
inclusive,)	Maxine M. Chesney
Defendants.)	
_____)	

This Stipulated Protective Order is hereby entered into between the parties and their attorneys in this action. The purpose of this Stipulated Protective Order is to protect against disclosure of confidential and/or proprietary information that is set forth below.

GOOD CAUSE STATEMENT

This is an action brought by an insured against an insurer arising from the denial of a claim for benefits under an insurance policy. Plaintiff Anita D. Paratley ("Plaintiff") is seeking the claims manual of defendant Conseco Health Insurance Company ("Defendant") which contains information which is

1 private, confidential and trade secret as defined under
2 California Civil Code §3426.1, which definition is incorporated
3 herein by reference.

4 Defendant utilizes a number of computer operating systems,
5 including systems which are inter-related in various respects.
6 Defendant's claim processing includes the use of a computer
7 operating system. This system was specifically designed and
8 created for use by defendant, and its claims personnel, who are
9 specially trained in its use.

10 Defendant has a claims manual which was designed and created
11 for the use of defendant's personnel in conjunction with this
12 computer operating system. It contains numerous references to the
13 system and components thereof. It contains operational
14 information, codes, and links.

15 The manual contains information concerning defendant's
16 computer operating systems, and claim processing, which could be
17 of interest to third parties, including defendant's competitors,
18 and others, and might be used by such third parties, in ways
19 which could damage and injure defendant in the conduct of its
20 business.

21 The manual was designed and created for the sole use of
22 defendant and was not intended to be disclosed to third parties.
23 Disclosure of the manual, or information contained therein, to
24 third parties, absent a protective order, could be severely
25 prejudicial to defendant.

26 Further, plaintiff intends to notice the depositions of
27 defendant's personnel and will or may be questioning such
28 personnel about the claims manual, information contained therein,

1 information related thereto, which is private, confidential and
2 trade secret, as defined under California Civil Code §3426.1.
3 Further, plaintiff may serve additional written discovery,
4 including interrogatories, documents requests, and admissions, in
5 which she will or may be questioning defendant about the claims
6 manual, information contained therein, and information related
7 thereto, which is private, confidential and trade secret, as
8 defined under California Civil Code §3426.1. It is reasonably
9 necessary that such documents, testimony and discovery responses
10 be protected from disclosure, except as set forth in this
11 Stipulated Protective Order.

12 The parties hereby stipulate to the following protective
13 order:

14 1. The following procedures shall be employed and the
15 following terms, conditions and restrictions shall govern with
16 respect to the claims manual produced by defendant Conseco Health
17 Insurance Company ("Defendant") which contains information which
18 is private, confidential and trade secret as defined under
19 California Civil Code §3426.1, including all writings and
20 information contained therein, (as broadly defined in Federal
21 Rules of Evidence, Rule 1001) and all deposition testimony,
22 deposition exhibits, interrogatories, documents requests, and
23 admissions relating to the claims manual (the "Discovery
24 Material").

25
26 2. The parties agree that persons employed by the United
27 States District Courts in California have no duty to the parties
28 to protect or maintain the alleged confidentiality of any

1 information in any papers filed with the Court.
2

3 3. All Discovery Material, which a producing party or
4 producing third party believes in good faith to be and is, in
5 fact, entitled to protection from public disclosure under
6 governing law, shall be designated as "CONFIDENTIAL" at the time
7 of production (hereinafter "Confidential Material") except as
8 otherwise provided herein.
9

10 4. Discovery Material may be designated as Confidential
11 Material as follows:

12 A. Documents shall be designated as confidential by
13 being stamped or marked CONFIDENTIAL. Multi-paged documents
14 can be designated CONFIDENTIAL by stamping or marking the
15 first page only of such document.

16 B. Depositions may be designated CONFIDENTIAL by
17 stamping or marking the face sheet of the transcript (or
18 marking on a videotape) accordingly.

19 C. For applications and motions to the Court in which
20 a party seeks to submit Confidential Material, the entire
21 original application or motion and judges copy containing
22 the confidential material shall be filed with the Court in
23 separate sealed envelopes or other appropriately sealed
24 containers on which shall be endorsed the title of the
25 action to which it pertains, an indication of the nature of
26 the contents of the sealed envelope or other container, the
27 word "CONFIDENTIAL" and a statement substantially in the
28 form:

1 This envelope is sealed pursuant to order of
2 the Court, contains confidential information,
3 and is not to be opened or the contents
 revealed except by order of the Court.

4 A proposed order shall also be presented to the judge
5 along with the Confidential material submitted for filing under
6 seal.

7 D. Any Court hearing which refers to or describes
8 Confidential Material shall in the Court's discretion be in
9 camera.

10 E. Notwithstanding the above, any party may apply to
11 the Court allowing the filing of papers containing
12 Confidential Material, if that party believes the filing of
13 the papers is necessary for a complete record. Any such
14 papers shall be presented to the Court by the submitting
15 party in accordance with "4(C)" above. Any papers
16 containing Confidential Material shall be returned to the
17 submitting party upon dismissal or final judgment in the
18 action.

19 F. Any party may designate as CONFIDENTIAL any
20 Discovery Material produced by a third party, if that party
21 believes in good faith that such Discovery Material is
22 entitled to protection from disclosure under the terms of
23 this Order, as though it had been produced by a party to
24 this action. Such designation shall be made by giving
25 written notice to all parties, and the producing party,
26 within 30 days after the date of production of the Discovery
27 Material to be so designated.

1 5. Confidential Material, the information contained
2 therein, and any summaries, copies, or abstracts of that
3 information shall not be disclosed for any purpose other than the
4 prosecution, defense, or settlement of this action and shall not
5 be disclosed or made available to anyone other than "qualified
6 persons" as defined below.

7
8 6. "Qualified persons" are:

9 A. the Court, including judicial employees and other
10 necessary personnel such as court reporters;

11 B. the parties;

12 C. jurors at trial;

13 D. trial witnesses or deponents, their attorneys, if
14 any;

15 E. court reporters, transcribers, notary publics, or
16 stenographers;

17 F. the attorneys of record for a party, any attorneys
18 of record for a party, any attorney of a law firm designated
19 as attorneys of record for a party, in-house attorneys of a
20 party, and the necessary paralegal, clerical, and
21 secretarial staff employed by such counsel in this action;

22 G. designated experts and/or consultants retained by
23 any party and/or their counsel solely for the purpose of
24 discovery in this litigation or assisting in the preparation
25 of this litigation for trial;

26 H. expert witnesses at any deposition or other hearing
27 in this action;

28 I. any authors or identified original recipients of

1 the Confidential Material; and

2 J. any other persons as to whom the parties in writing
3 agree, or as may be designated by order of the Court after
4 reasonable notice to the parties.

5
6 7. Only the attorneys of record for the parties in the
7 above-captioned lawsuit may authorize copies to be made of the
8 Confidential Material. All Qualified persons shall be subject to
9 this order enjoining them from disclosing the Confidential
10 Material to any person, except in conformity with this Order.

11
12 8. Under no circumstances shall any party provide the
13 Confidential Matter to any competitor of defendant, unless the
14 defendant's written authorization is first obtained.

15
16 9. All witnesses, including expert witnesses, and/or
17 consultants to whom a party desires to disclose Confidential
18 Material, other than authors or identified original recipients,
19 must sign the document, in the form of Exhibit "A" attached
20 hereto, prior to the disclosure of Confidential Material to such
21 person. At the conclusion of the case, counsel for all parties
22 shall provide opposing counsel copies of all Confidentiality
23 Agreements executed pursuant to this Order, except for
24 undisclosed consultants.

25
26 10. In the event that Confidential Material are used in any
27 court proceeding in this action, other than trial, they shall not
28 lose their confidential status through such use, and the parties

1 will cooperate in taking reasonable steps to protect their
2 confidentiality during such use. This Order shall not be deemed
3 a waiver of any party's right to object to the production,
4 disclosure or admissibility of Confidential Material or the
5 taking of any testimony or other evidence on any basis other than
6 their confidential status pursuant to this Order.

7
8 11. This Order shall continue to be binding after the
9 conclusion of this litigation. However, a party may seek written
10 permission of the opposing parties or further order of the Court
11 with respect to dissolution or modification of this Order at any
12 time.

13
14 12. Within thirty (30) days after conclusion of this case,
15 counsel shall assemble and return to the other counsel all copies
16 of Confidential Material in their possession and in the
17 possession of any person to whom they have disseminated
18 Confidential Material, including undisclosed consultants, or may
19 destroy them. Counsel of record for a party returning or
20 destroying Confidential Material will verify that same has been
21 accomplished and will verify that no other such Confidential
22 Material exists in the custody, control or possession of that
23 party, its counsel, its agents or any consultants, whether or not
24 disclosed. Counsel may retain copies of briefs filed with the
25 Court and attorney work product so long as maintained in
26 accordance with this Order.

27
28 13. All documents marked "CONFIDENTIAL" will be treated as

1 Confidential Material until a court orders or the parties agree
2 otherwise.

3
4 14. Nothing in the foregoing provisions of this Order
5 shall:

6 A. limit any party in the introduction of Confidential
7 Material into evidence, subject to the designating party's
8 right to seek protection from the court;

9 B. prevent a party from objecting to discovery which
10 it believes to be improper; or

11 C. limit any party's disclosure or use of Confidential
12 Material that were produced by that party.

13 D. constitute an admission by a party that material
14 designated confidential by another party, is, in fact,
15 confidential or limit a party's right to assert such
16 materials are not confidential.

17
18 15. Any Confidential Material that was or is inadvertently
19 produced without a "CONFIDENTIAL" stamp on it or that was
20 previously produced in anticipation of the entry of this
21 Protective Order, may be designated as confidential by a writing
22 to the receiving party that identifies the documents intended to
23 be confidential.

24
25 16. If any party is served with a subpoena to produce
26 Confidential Material, or ordered by the Court to do so, the
27 party shall give immediate written notice to the non-subpoenaed
28 party to allow the non-subpoenaed party to seek protection by the

1 Court or appointed discovery referee.

2
3 17. The parties and all third parties subject to discovery
4 in this action or who receive a copy of this Order, hereby
5 consent to the jurisdiction of this Court for the purpose of
6 enforcement of the provisions of this Order with respect to this
7 action, and the Court hereby retains jurisdiction to interpret
8 and enforce this Order under the laws of the United States of
9 America. Confidential Material may be shown to trial witnesses
10 and their attorneys, if any, at trial, whether or not counsel has
11 first obtained an agreement with the trial witness or his or her
12 attorney(s) to hold such material confidential, as such trial
13 witnesses shall be bound by this Order.

14
15 18. The parties and their respective attorneys are in
16 agreement concerning the above terms of this Stipulated
17 Protective Order as acknowledged hereafter by the signatures of
18 the attorneys for the parties, and have requested the Court to
19 enter this Stipulated Protective Order.

20 DATED: February 6, 2006

LAW OFFICES OF MARC J. WODIN

21
22 By: _____
23 /s/ MARC J. WODIN
24 Attorneys for Defendant CONSECO
HEALTH INSURANCE COMPANY

25 DATED:

FRIEDMAN, RUBIN & WHITE, LLP

26 By: _____
27 /s/ MICHAEL WHITE
28 Attorney for Plaintiff ANITA D.
PARATLEY

1 DATED: February 4, 2006

2
3 By: /s/
4 RICHARD A. SELTZER
Attorney for Plaintiff ANITA D.
PARATLEY

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8 ORDER

9 Upon due consideration of the Stipulated Protective Order,
10 IT IS HEREBY ADOPTED AS ORDER OF THIS COURT, with the exceptions that (1) if
11 only a portion of a document a party seeks to file under seal includes confidential matter, the
12 filing party must comply with Civil Local Rule 79-5(c); and (2) upon dismissal or entry of final
13 ~~DATED:~~ judgment, the Clerk of the Court shall not return to the filing party any documents
14 filed under seal, see Civil Local Rule 79-5(f).

15 DATED: February 8, 2006.

16 Maxine M. Chesney
17 THE HONORABLE MAXINE M. CHESNEY
18 DISTRICT JUDGE OF THE UNITED
19 STATES DISTRICT COURT for the
20 NORTHERN DISTRICT OF CALIFORNIA
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